## *Maryland Court of Appeals. December*, 1852.

ALBERT AND WIFE *vs.* THE CITY OF BALTIMORE AND THE SAVINGS BANK OF BALTIMORE.

1. T. J. directed his executors by his will to purchase $6,300 of six per cent. stock of the City of Baltimore, which he ordered to be set apart and held by S. J., Jr., and A. D. J., as trustees, in trust for his daughter, E. J. A. This stock was accordingly purchased by S. J., Jr., and A. D. J., as *executors*, and transferred to themselves as *trustees*, by the proper officer of the City, on the 10th December, 1841, and, at the same time, they directed the interest to be paid to E. J. A., or her order, until the power should be withdrawn. On the 16th of October, 1845, the trustees transferred this stock to the Savings Bank of Baltimore, and thereupon the Bank loaned money to S. J. Jr. in his individual name, who subsequently became insolvent, the other trustee having died; *held*, that from this state of facts there did not arise such knowledge on the part of the City of Baltimore of the designs of S. J. Jr., or such neglect on the part of its officers, as to render the City liable for the trustees' misapplication of their *cestui que trusts* property.
2. Where, by the terms of its charter, a corporation is prohibited from loaning any part of the funds deposited to a director, such loan, if made, cannot be recovered, and any security taken for it is void. Nor can the provision of the charter be evaded, by borrowing in the name of a stranger, where the director is really, and is known to be the person borrowing the money. But this doctrine does not extend to any other corporation borrowing, whereof a director chances to be a stockholder.
3. It is no answer, on the part of the Savings Bank, that the loan of the money and the hypothecation of the stock by A. D. J., is an executed contract. A. D. J. might be estopped from denying its legality, but it is otherwise with his *cestui que trust*.

This was an appeal from the Court of Chancery, and the opinion of this Court, which fully discloses the facts, was delivered by

LE GRAND, CH. J.—It appears from the proceedings in this case, that Talbot Jones, a citizen of Baltimore, in the year 1834 died, seized and possessed of a considerable estate; that he made a will, and appointed his two sons, Samuel and Andrew D. Jones, as his executors; and that among the objects of his bounty was his daughter Emily, one of the complainants.

The bill states that, by virtue of a decree of the High Court of Chancery, passed on the 6th November, 1841, in a suit instituted

to procure a division of the residuary estate of Talbot Jones among the legatees designated in his will, it was ordered that $6,300 of six per cent. stock of the City of Baltimore should be set apart, and held by Samuel Jones, Jr. and Andrew D. Jones as trustees, in trust for the sole and separate use of Emily J. Albert.

The bill alleges that this decree was made known to the proper officer of the corporation of Baltimore City; and, in pursuance of said decree, the stock was entered on the City's books in the name of Samuel and Andrew D. Jones, as trustees, and so remained until the 16th October, 1845, when the trustees transferred it to the Savings Bank of Baltimore; that, at the time of the transfer, the Bank knew the stock stood on the books of the City in the name of Samuel and Andrew D. Jones, as trustees, and if any consideration passed for the transfer, it was a loan made by the Bank of part of its deposits to Samuel Jones, in his individual name, or by his mercantile style of Talbot Jones & Co., which was known to the Bank to be his mercantile style, and it was also aware that he had no partner in the business carried on in the name of Talbot Jones & Co. It charges that, at the time of the loans, Jones, to whom they were made, was a director in the Savings Bank, and that they were made in violation of its charter, which prohibits loans to any of its directors. The death of Andrew, and the insolvency of Samuel Jones is alleged, and decree prayed, entitling the surviving trustee to $6,300 of six per cent. City stock, for the use of the complainant, Emily J. Albert; that the transfer to the Savings Bank be declared void, and to pass no title; and the City and Bank be decreed to refund all the dividends that may have accrued on the stock, since the 16th October, 1845.

Both the City and the Bank deny all knowledge of the contents of the will of Talbot Jones, and of the decree of the Court of Chancery, and the Bank, in addition, denies all knowledge of the fact, that Samuel Jones traded without a partner, under the style and name of Talbot Jones & Co.

The above summary of the principal averments of the bill and answers, is sufficiently full to present the questions this Court is called upon to consider and decide.

It appears from the proceedings that the stock, which is the subject of the controversy, did not belong to the estate of Talbot Jones at the time of his decease, but that it was subsequently purchased by the executors, and stood on the City books in their name *as such*, until it was transferred by them as executors to themselves as trustees. On the 10th of December, 1841, Samuel Jones and Andrew D. Jones, as *executors*, authorized Emily J. Albert, or order, to draw the interest on the stock standing in their names as *trustees*, until the power should be withdrawn, and, on the same day, she directed the same to be paid to her husband, one of the complainants.

On this state of facts, it is contended, the City is responsible for the misapplication of the private estate of Mrs. Albert. This supposition rests on the hypothesis that the decree of the 6th of November, 1841, by force of the act of 1785, chapter 72, section 13, was notice to the City of the will of Talbot Jones, and the interests of *cestui que trust* under it as ascertained by the decree, or, on the idea that as the stock originally stood upon the books in the names of Andrew and Samuel Jones, as executors, the City was, by force of that fact, affected with notice of the Will and of the *cestui que trusts* named in it, and that the transfer of the 16th of October, 1845, to which it assented was a breach of trust. We are of opinion that the section of the act of 1785 is not available in this case for the purpose for which it has been cited.

In support of the proposition that the City is responsible for the misappropriation of the stock by Samuel Jones, the counsel for the appellants cited many authorities. We do not deem it necessary to enter into an examination of them, because the principles which they announce have been very clearly evolved by the learned Chief Justice of the United States in an opinion pronounced by him in a case in many particulars like the one now before this Court. We allude to the decision in the case of *Lowry* vs. *The Commercial and Farmers' Bank of Baltimore, and others*, to be found reported in the 3d vol. of the Bankers' Magazine, page 201.

The principles recognized by the court in that case seem to us to be founded in sound policy and fully sustained by the authorities,

and we therefore adopt them, so far as they are applicable to the case before us.

It was a case growing out of a breach of trust on the part of an executor; the will and executor being the same to which reference is had in this suit. In that case, a certain number of shares of bank stock belonging to the estate of Talbot Jones were transferred by the executor, Samuel Jones, to another bank, as security for a loan which he had procured for his own use.

The learned Court held the particular circumstances of that case sufficient to affect the bank on whose books the stock stood, with all the consequences of notice of the trust, and therefore, whilst the transferree took a good title, the bank, through the negligence of whose officers the fraud was permitted to be perpetrated, was held responsible for the misapplication of the stock.

In the case before us, however, we are unable to perceive any circumstances which affect the city with such notice of the trust, or with the purposes of Jones, on making the transfer so as to render it liable to a decree for restitution.

In the case to which we have already referred the Court says:— "Undoubtedly the mere act of permitting this stock to be transferred by one of the executors furnishes no ground for complaint against the bank, although it turns out that this executor was by this act of transfer converting the property to his own use. For an executor may sell or raise money on the property of the deceased in the regular execution of his duty, and the party dealing with him is not bound to inquire into his object, nor liable for his misapplication of the money. Such is the doctrine in the English courts, and would seem to have been the law of this State, previous to the Act of Assembly of December session, 1843, ch. 304, and the transaction now before us took place before that act went into operation. But it is equally clear that if a party dealing with an executor has at the time *reasonable ground* for believing that he intended to misapply the money, or is in the very transaction of applying it to his own private use, the party so dealing is responsible to the persons injured. For this doctrine the court refer to the cases collected and commented on in the cases of *McLeod* vs.

*Drummond*, 17 Vesey, 152, and *Fields* vs. *Tchuffalem*, 7 Johns. Ch. Rep. 150.

These being the principles which must govern the decision of the question as to the liability of the City, the next inquiry is, Are there any circumstances in the case before us which furnish *reasonable ground* to the officer of the City to suspect that Jones was about to commit a breach of trust by appropriating the City stock to his own private use?

If any exist, they are to be found in the record entries; and they are that the stock once was in the name of Samuel and Andrew Jones, as executors, and afterwards by their act transferred to them as trustees; these, in connection with the privileges to Mrs. Albert to draw the dividends until the authority should be withdrawn, constitute all the facts on which the presumption of reasonable grounds for knowledge or suspicion of the purposes of Jones can be placed. We think them wholly inadequate to sustain the theory of the appellant. The register of the City—the officer charged with the custody of the records of the public stock of the City—expressly declares he had no knowledge that the transfer of the stock was made to the two Jones' as trustees, because of a decree of the Court of Chancery, and that it was and had been the uniform practice of the office to transfer stock standing in the name of trustees on the endorsement of such trustees.

We have seen *that the mere act of permitting the executors to transfer the stock could furnish no ground of complaint against the City*, and the question therefore is "Could any arise out of the mere act of allowing the trustees to transfer." The same doctrine is applicable to both cases, for there is no difference, in principle, between them. We attach no importance to the authority given to Mrs. Albert to take the dividends. By its very terms it was revocable at the pleasure of the parties who gave it. And the authority to her to take the dividends was as well calculated to arouse the suspicions of the register of the City as to its propriety as the transfer to the Savings Bank, to suggest the intention of Jones to apply the stock to his own uses. The mere designation of the parties as trustees, without a specification of trust, or designation of the *cestui*

*que trust*, could not possibly give the City officer any information; and had he made inquiry in regard to the object and purposes of the trust, there was no one to whom he could with propriety apply but to the trustees themselves, for the entry on his books gave him no clue whatever. A reference to the will of Talbot Jones would have given no information on the subject, for it was silent in regard to the particular stock in question; in fact, it was purchased by the executors subsequently to his death. For these reasons we concur in opinion with the Chancellor, that there was not such knowledge on the part of the City of the designs of Samuel Jones, or such neglect of duty on the part of the officers as to make it liable to restore the stock or its equivalent in value.

The next question is as to the responsibility of the Savings Bank. Independently of the provisions of its charter, we are clear in the opinion, the circumstances under which it obtained the stock would have given it a perfect title. As is very justly remarked by the Court, in the case of *Lowry* vs. *The Commercial Bank*, "a transfer of stock cannot be likened to an ordinary conveyance of real or personal property. The instrument transferring the title is not delivered to the party * * * The party to whom it is transferred rarely, if ever sees the entry, and relies altogether upon the certificate of the proper officer stating that he is entitled to so many shares." In the case before the Court the Bank denies explicitly all knowledge of the trust, and there was nothing in the manner of the transfer different from the usual course of proceeding in such transactions, which, are of hourly occurrence in a large commercial city like Baltimore, where stocks are the subjects of sale and of hypothecation.

But the real difficulty in the case of the Bank grows out of its charter. The second section of the act of 1818, chapter 93, provides, that the "Corporation shall not be authorized to make any bills or notes in the nature or description of bank notes, *or to loan any part of the funds deposited to any director of said Corporation.*"

At the time of the loans to Samuel Jones by the Bank and the hypothecation, by him, of the City stock, he was a director of the Bank; and the question arises, whether the transactions had with

him touching the stock in question, vested in the Corporation, under its charter, any title to the stock.

It cannot be denied that a loan to a director could not be recovered, the Bank having no power to make it, such loan, and any security taken for it would be void, 3 Wendall 574. But it is said the loans were not made to a director, but to a firm of which he was a member, and that, to give such a construction to the charter of the Bank as would inhibit it from loaning any portion of its deposits to a company of which one of its directors might chance to be a member, would be productive of consequences of an alarming character. However this may be, we do not feel ourselves called upon to disregard what we conceive to be the clearly expressed purpose of the Legislature. Its policy in this particular is as much the law for our government as it is for that of the corporation which is the creature of its power. We cannot disguise from ourselves, the manifest purpose of the Legislature to prevent any of the directors of the Bank from applying to their use its deposits, and if we were to sanction the doctrine, that any director could avail himself of the advantages of loans by procuring them in the name of a firm instead of his individual name, we should defeat the very object which the Legislature had in view when it authorized the establishment of the Bank. No better case could be adduced to show the unsoundness of the construction contended for on behalf of the Bank than the one now before the Court. It is admitted on all sides that Samuel Jones, as such, could not under the charter of the Bank, obtain a loan of any of its deposits, and yet, if the views of counsel be correct, he could obtain it, by applying for the loan under a name different from his own, but which, at the time of his application should be known to indicate a commercial house of which he was a partner, if not the only one constituting it. Such a state of things cannot receive the sanction of a Court of Justice, whose duty it is, to effectuate the purposes of the Legislature and not to thwart them. But, it is urged, such a construction as we have given to the charter, would render void any loan which might be made by the Bank to a corporation of which one of its directors might be a stockholder. Such a consequence by no means

follows from what we have said. The distinction between a private mercantile firm and a corporation is obvious, and exists in this:— that when a person becomes a partner in the transactions of commercial business he does not lose his individuality, whilst he does, so far as the transactions of the corporation are concerned, when he becomes a stockholder. "A corporation," says Chancellor Kent, 2 vol. Com. 266, "is a franchise possessed by one or more individuals who subsist as a body politic, under a special denomination, and are vested, by the policy of the law, with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual."

But, it is urged, that conceding the Bank had no power, under its charter, to make the loans to Samuel Jones, and to receive as security for the same an hypothecation of the stock, yet inasmuch as the contract has been executed, it is now too late to object. To this reasoning we cannot assent. It is true, Jones might be estopped from denying the legality of the transaction, but it does not therefore follow that the rights of his *cestui que trust* are also concluded by what has been done.

If what the Bank did was illegal, no valid defence can be deduced from it against the party who has been injured by its acts. The Bank ought to have known, and the law imputes such knowledge to it, when it was making the contract, that it was acting in violation of its charter; and, if an injury accrued to a third party from its acts, in justice it should be held liable. Any other view would sanction the doctrine that a creature of the law, with but limited powers, by an usurpation of power, and in defiance of the plain inhibition of the Legislature, may enable a fraudulent person to dispose of the property of a third person, without being answerable for so doing. What Jones did was a wrong on the rights of the appellants; and if the Bank, in contempt of the limitation imposed upon it by its charter, aided him in the perpetration of the fraud, there is no reason, either of public policy or in law, which should exempt it from responsibility for the injury occasioned by its co-operation. To announce any other doctrine, would be to proclaim a perfect immunity to the Bank to assist in the infliction of wrong,

provided all knowledge of its authorized acts be kept from the party to be injured until the injustice should be complete. We hold, that a corporation has no power to do what it is inhibited by its charter from doing; and if, in violation of it, injury should be done to the property of a third party, it is liable. There can be no hardship in such a rule; all that is necessary for it to do to avoid liability is to confine itself within the limits prescribed by law, which gives it existence and defines and regulates the extent and exercise of its delegated powers. We concur with the Chancellor in opinion in so far as his decree has reference to the City of Baltimore, but dissent from that portion of it which exempts the Savings Bank from liability to complainants for the amount of the stock sold. We will sign a decree in conformity with these views.

Bill dismissed as to the City of Baltimore, and decree reversed so far as the Savings Bank is concerned.

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*Louisville Chancery Court, Kentucky, January*, 1853.

SECOMB, VOORHIES & CO. VS. JONES WADE.

1. Where J. W. purchased certain merchandise at Wilmington, N. C., and shipped it on board a vessel bound to New Orleans, consigned to M. & R., to be forwarded to J. W. at Cincinnati, with instructions to M. & R. to sell it at a certain price: and thereupon a portion is sold and a portion remains unsold and continues its transit, the latter is still subject to the vendor's right of stoppage *in transitu*, the middle man having no such possession as to end the transit.
2. An effort to sell or a sale of part of goods consigned to a forwarding merchant, in obedience to instructions, is not such a change of the destination or possession of the whole as to destroy the vendor's right *in transitu*.
3. Goods in transit stopped by a general creditor are still subjected to the vendor's claim for the purchase money.

This was an attachment sued out by the complainants, creditors of Wade, against a large amount of property passing by the City of Louisville from New Orleans to the defendant at Cincinnati.

In February, 1852, Wade bought of Henry Nutt, on credit, at Wilmington, North Carolina, a large quantity of spirits of turpen-